

REMARKS

This responds to the Final Office Action mailed on July 24, 2008.

Claims 16 and 34 are amended, no claims are canceled, and no claims are added; as a result, claims 16-39 are now pending in this application. The amendments are fully supported by the current application (e.g., at page 14, lines 6-9 and 22-23) and do not add new matter.

Examiner Interview Summary

Applicant would like to thank Examiner John M. Winter for the courtesy of a phone interview on September 2, 2008 between the Examiner and Applicant's representative Ali Mireshghi. During the interview, the claims and the cited references were discussed and an agreement was reached that the independent claims of the application would be amended to place them in a condition for allowance.

§103 Rejection of the Claims

Claims 16-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Padgett et al. (U.S. 6,167,518) in view of Archibald et al. (U.S. 5,825,883).

For at least the reasons set forth below, Applicant respectfully submits that, in light of the amendment, this rejection is moot, and the identified claims are non-obvious over Padgett and Archibald, and are therefore allowable. Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.¹

Claim 16, as amended, now recites, in pertinent part:

“receiving at least one response from the user computer, the at least one response including a first computer fingerprint file and a first identification for the user generated using the first computer fingerprint file, said first computer fingerprint file including at least one identifying characteristic of the user computer.”

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)

(Emphasis added throughout)

The Final Office Action, at page 3, when discussing the claim 16 feature of “receiving at least one . . . including a first computer fingerprint file and a first identification for the user, . . .” concedes that the feature is not disclosed in Padgett. However, the Final Office Action, has relied on Figure 2 and 16 and col. 6, line 36 in Archibald to show the claimed *second computer fingerprint file*, allegedly reading upon “meter identification code” in Archibald. The Final Office Action further states: “Padgett . . . discloses the claimed invention except for a second fingerprint file.”² Applicant respectfully submits that Padgett does not relate *a first identification for the user generated using the first computer fingerprint file*, as recited in the amended claim 16. In stark contrast with claim 16, Padgett provides “a digitized representation of a unique biological feature of a registrant”³ Clearly, *a first identification for the user generated using the first computer fingerprint file*, is missing from the disclosures in Padgett. As such, Padgett, individually or in combination, does not disclose the amended claim 16 feature of “*a first identification for the user generated using the first computer fingerprint file*.” Consequently, the combination of Padgett and Archibald fail to disclose the limitation of “*receiving at least one response from the user computer, the at least one response including a first computer fingerprint file and a first identification for the user generated using the first computer fingerprint file, said first computer fingerprint file including at least one identifying characteristic of the user computer,*” as recited in the amended claim 16.

The Final Office Action has failed to discuss, and Applicant could not find any passage in either Padgett or Archibald that discloses, the claim 16 feature of “*sending at least one verification response to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file and upon the comparing of the first identification for the user against the second identification for the user.*” Padgett states:

² The Final Office Action, page 3

³ Padgett, Abstract

“[t]he certificate authority compares the decrypted digital representation with representation sent from the remote registration terminal. If a match is found, the certificate authority forms a certificate . . .the certificate is sent to the registrant.”⁴

According to the above quoted passage, the decrypted digital representation is compared . . . and if a match is found, a certificate is sent to the registrant. However, as discussed above, the digital representation in Padgett represents “a unique biological feature” and is not the same as the *first identification for the user generated using the first computer fingerprint file*, as recited in the amended claim 16.

The same claim 16 feature that was shown to be missing from Padgett is also absent in Archibald’s disclosures. Archibald merely sends a “usage message” to an authority. Specifically, Archibald “determines whether an authority exists for the particular publisher identified . . . generates a usage message and subsequently sends that message to the authority”⁵ Clearly, the usage message sent to an authority cannot be equated with the claimed *verification response sent to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file*. Accordingly, Padgett and Archibald, separately or the combination, do not relate the imitation of ‘sending at least one verification response to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file and upon the comparing of the first identification for the user against the second identification for the user,’ as recited in the amended claim 16.

Therefore, Padgett and Archibald, individually or in the combination, fail to teach or suggest each and every element of the amended claim 16. Applicant respectfully submits that the difference between the claimed subject matter of amended claim 16 and the disclosures in Padgett and Archibald is significant and non-obvious to a person of ordinary skill the art at the time the application was filed. Moreover, disclosures in neither Padgett nor Archibald provide any reason for a person of ordinary skill in the art to seek to combine the teaching of Padgett and Archibald. As such, at least for the

⁴ Padgett, col. 3, lines 4-10

⁵ Archibald, col. 19, line 10-23

reasons set forth above, claim 16 and its dependent claims 17- 33 are not rendered obvious by the combination of Padgett and Archibald and, thus, are allowable.

Similar arguments as presented with respect to claim 16 are also applicable to a consideration of independent claim 34. Accordingly, at least for the reasons articulated above with respect to claim 16, no *prima facie* showing of obviousness for claim 34, and its dependent claims 35-39 are made by the Final Office Action. Thus, these claims are believed to be allowable.

Therefore, Applicant respectfully requests that, in view of the presented arguments, the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 408-278-4042 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 2, 2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 2nd day of October 2008.

Dawn R. Shaw

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Signature